

**\*\*NOT PRINTED FOR PUBLICATION\*\***

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

W. RODNEY COVINGTON	§	
VS.	§	CIVIL ACTION NO. 9:17-CV-202
WILLIAM STEPHENS, <i>et al.</i> ,	§	

MEMORANDUM OPINION AND ORDER

Plaintiff, W. Rodney Covington, an inmate formerly confined at the Polunsky Unit with the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983 against defendants Laurie Montgomery, N.P. and Dallas Ryan, D.D.S.<sup>1</sup>

Procedural Background

Plaintiff filed his original complaint on November 21, 2017 originally in the Southern District of Texas (docket entry no. 1). Venue was transferred to the Lufkin Division of the Eastern District of Texas on November 28, 2017 (docket entry no. 4). The Magistrate Judge to whom this case was referred entered an order to replead on April 16, 2018 (docket entry no. 13). Plaintiff then filed an amended complaint on June 4, 2018 (docket entry no. 19).

Plaintiff alleges for three years following extractions of all his teeth by dental staff employed by TDCJ, he has been suffering from constipation, painful gas and bloating, and other stomach conditions. Plaintiff claims further that these problems are the result of ingesting food improperly as he cannot chew due to his lack of teeth. Plaintiff contends he repeatedly requested dentures from the dental department but his requests have been denied. Plaintiff alleges although his original teeth were in poor condition, his original teeth were serviceable and he could chew his food. Plaintiff states that at the time his teeth were extracted, he was told he would be provided dentures but has

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<sup>1</sup>Plaintiff's claims against defendants Stephens and Harris were dismissed for failure to state a claim and as frivolous on October 18, 2018 (docket entry nos. 14, 24 & 28).

yet to receive them. Plaintiff seeks injunctive relief and compensatory damages.

The defendants were ordered to answer or otherwise plead on October 15, 2018 (docket entry no. 22). Defendants filed an Answer on November 13, 2018 (docket entry no. 25). On November 29, 2018, the Magistrate Judge entered a Docket Control Order (docket entry no. 26). Defendants sought an extension and an Amended Docket Control order was entered on January 10, 2019 (docket entry no. 33).

On March 14, 2019, the Office of the Attorney General as Amicus Curiae notified the Court it was unable to serve and/or locate the plaintiff. Defendants attempted to serve plaintiff at the Polunsky Unit but the motions and/or notices were returned as not deliverable. The envelope was stamped “RETURN TO SENDER NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD.” Advisory, Ex. A. In addition, the Office of the Attorney General advises the Court that plaintiff was discharged on January 16, 2019 and the agency does not have a forwarding address. It has been almost a year and plaintiff has yet to update the Court with his current address.

#### Discussion

Federal Rule of Civil Procedure 41(b) authorizes a district court to dismiss an action for failure to prosecute or for failure to comply with any court order. *Larson v. Scott*, 157 F.3d 1030, 1031 (5th Cir. 1998). “This authority [under Rule 41(b)] flows from the court’s inherent power to control its docket and prevent undue delays in the disposition of pending cases.” *Boudwin v. Graystone Insurance Co., Ltd.*, 756 F.2d 399, 401 (5th Cir. 1985) (citing *Link v. Wabash, R.R. Co.*, 370 U.S. 626, 629 (1962)).

By failing to update this court with his current address, plaintiff has prevented the court from communicating with him and has failed to diligently prosecute his case. This case, therefore, should be dismissed for want of prosecution.

ORDER

This civil rights action filed pursuant to 42 U.S.C. § 1983 is **DISMISSED** without prejudice for want of prosecution pursuant to Federal Rule of Civil Procedure 41(b).

So **ORDERED** and **SIGNED March 20, 2020**.

A handwritten signature in black ink, appearing to read "Ron Clark", written in a cursive style.

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Ron Clark, Senior District Judge